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**UNITED STATES DISTRICT COURT**

**DISTRICT OF NEVADA**

MGM MIRAGE OPERATIONS, INC., a  
Nevada corporation,

Plaintiff,

v.

SUSANA GONZALES, an individual, and  
SMART ANSWER S.A., an unknown business  
entity;

Defendants.

CASE NO.

**COMPLAINT FOR DAMAGES AND  
INJUNCTIVE RELIEF**

- (1) Cybersquatting  
under 15 U.S.C. § 1125(d)
- (2) Trademark Infringement  
under 15 U.S.C. § 1114
- (3) Unfair Competition  
under 15 U.S.C. § 1125(a)
- (4) Trademark Dilution  
under 15 U.S.C. § 1125(c)
- (5) State Trademark Infringement  
under N.R.S. § 600.420
- (6) State Trademark Dilution  
under N.R.S. § 600.435
- (7) Common Law Trademark Infringement
- (8) Deceptive Trade Practices  
under N.R.S. § 598.0903, et seq.
- (9) Intentional Interference with  
Prospective Economic Advantage

For its complaint, MGM MIRAGE Operations, Inc. alleges the following.

**NATURE OF THE CASE**

This is an action for cybersquatting, trademark infringement, unfair competition, and trademark dilution under federal statutes, with pendent state and/or common law claims for trademark infringement, trademark dilution, deceptive trade practices, and intentional interference with prospective economic advantage. Plaintiff seeks damages, attorneys' fees, costs, and preliminary and permanent injunctive relief.

**JURISDICTION AND VENUE**

1. This Court has subject matter jurisdiction over this case pursuant to 28 U.S.C. §§ 1331 and 1338(a). This Court has supplemental jurisdiction over Plaintiff's state and common law claims pursuant to 28 U.S.C. § 1367(a).

2. This Court has personal jurisdiction over Defendants based upon the following: (a) Defendants operate a website on the Internet that is accessible to residents of the State of Nevada; (b) Defendants' website is interactive in that it seeks to obtain information from web users; (c) Defendants' website is interactive in that it allows web users to gamble online; and (d) Defendants have committed tortious acts that Defendants knew or should have known would cause injury to a Nevada resident in the State of Nevada.

3. Venue is proper in the United States District Court for the District of Nevada under 28 U.S.C. §§ 1391(b) and 1391(c). Venue lies in the unofficial Southern division of this Court.

**PARTIES**

4. Plaintiff MGM MIRAGE Operations, Inc. is a Nevada corporation with its principal place of business in Las Vegas, Nevada. Plaintiff has been authorized to protect and enforce the trademarks owned by New Castle Corp. (the "Trademark Owner").

5. Upon information and belief, Susana Gonzales is an individual residing and doing business in the Republic of Panama.

6. Upon information and belief, Smart Answer S.A. is an unknown business entity doing business in the Republic of Panama.

1           7.       Upon information and belief, Susana Gonzales and Smart Answer S.A. are each the  
2 alter ego of the other, and are the officer, agent, servant, representative, and/or employee of the  
3 other, acting in participation with the other, having authority or apparent authority to bind the  
4 other.

5                                   **ALLEGATIONS COMMON TO ALL COUNTS**

6           8.       “Excalibur” is a famous destination resort hotel casino located on the world-famous  
7 “Las Vegas Strip” in Las Vegas, Nevada.

8           9.       Since the property opened in 1990, the Trademark Owner has continuously used  
9 the EXCALIBUR trademarks in connection with advertising and promoting the property in the  
10 United States and around the world. The Trademark Owner has spent substantial sums of money  
11 to advertise and promote the EXCALIBUR trademarks in print, broadcast media, and on the  
12 Internet through the Excalibur web site accessible throughout the United States and around the  
13 world at <excaliburlasvegas.com> and <excalibur-casino.com>, among others. A true and  
14 accurate copy of the home page for the Excalibur website is attached hereto as Exhibit 1, and is  
15 incorporated by this reference. In addition, the Trademark Owner has made extensive use of the  
16 EXCALIBUR trademarks on, among other things, signage, wearing apparel, souvenirs and  
17 promotional materials.

18           10.     The EXCALIBUR name and logo are service marks that are owned by the  
19 Trademark Owner and registered on the Principal Register of the United States Patent and  
20 Trademark Office, including, among many others:

- 21                   a.       EXCALIBUR: Registration No. 1,659,163 for hotel services, and  
22                   b.       EXCALIBUR: Registration No. 1,549,563 for casino services.

23           11.     These federal trademark registrations have not been abandoned, canceled, or  
24 revoked. Moreover, these federal registrations have become incontestable through the filing of  
25 Section 8 and 15 affidavits in the Patent and Trademark Office.

1           12.     Based on its federal trademark registrations and extensive use, the Trademark  
2 Owner owns the exclusive right to use the EXCALIBUR trademarks in connection with hotel,  
3 casino and related services.

4           13.     The EXCALIBUR trademarks have become distinctive and famous in the United  
5 States and around the world for resort hotel and casino services.

6           14.     On or about May 18, 2008, Defendants registered the <excaliburlasvegas.org>  
7 Internet domain name with MyDomain, Inc., a domain name registrar. The  
8 <excaliburlasvegas.org> domain name contains the EXCALIBUR Marks coupled with the words  
9 “las vegas,” which identify the location of the Trademark Owner’s resort hotel casino.

10          15.     Some time after registration, Defendants linked the <excaliburlasvegas.org>  
11 domain name to an online gambling website entitled “Golden Casino.” A true and accurate copy  
12 of the “Golden Casino” home page of the website is attached hereto as Exhibit 2, and is  
13 incorporated herein by this reference.

14          16.     When the web user types in the <excaliburlasvegas.org> domain name, which is  
15 linked to the “Golden Casino” website, it appears as if the <excaliburlasvegas.org> domain name  
16 is somehow associated or, affiliated with, and/or sponsored by “Golden Casino” when it is not.

17          17.     Defendants have not registered and used the <excaliburlasvegas.org> domain name  
18 in good faith.

19          18.     By registering and using a domain name containing the EXCALIBUR Marks,  
20 Defendants were and are attempting to trade on the goodwill of the Trademark Owner.

21          19.     By registering and using a domain name containing the EXCALIBUR Marks, and  
22 by linking the same to an online gaming website, Defendants were and are attempting to create an  
23 association between the <excaliburlasvegas.org> domain and the Trademark Owner.

24          20.     By registering and using the <excaliburlasvegas.org> domain name, Defendants  
25 were and are attempting to frustrate or divert Internet traffic intended for the Trademark Owner.

**COUNT I**

(Cybersquatting

Under The Lanham Act, 15 U.S.C. § 1125(d))

21. Plaintiff incorporates the allegations in the preceding paragraphs as if fully set forth herein.

22. Defendants have registered, trafficked in, and/or used a domain name that is confusingly similar to and/or dilutive of the EXCALIBUR Marks, which were distinctive and/or famous at the time Defendants registered the <excaliburlasvegas.org> domain name.

23. Upon information and belief, Defendants have or have had a bad faith intent to profit from the EXCALIBUR Marks.

24. As a direct and proximate result of such conduct, Plaintiff and the Trademark Owner have suffered, and will continue to suffer, monetary loss and irreparable injury to their business, reputation, and goodwill.

**COUNT II**

(Trademark Infringement

Under The Lanham Act, 15 U.S.C. § 1114)

25. Plaintiff incorporates the allegations in the preceding paragraphs as if fully set forth herein.

26. Defendants have used and/or are using in commerce the <excaliburlasvegas.org> domain name, which contains the EXCALIBUR Marks, and, thus, Defendants' domain name is confusingly similar to the Trademark Owner's trademarks.

27. Defendants' use in commerce of the EXCALIBUR Marks and/or a mark confusingly similar to the EXCALIBUR Marks in the <excaliburlasvegas.org> Internet domain name and Defendants' directing the same to an online gambling website, constitutes a reproduction, copying, counterfeiting, and colorable imitation of the Trademark Owner's trademarks in a manner that is likely to cause confusion or mistake or that is likely to deceive consumers.

28. By using the EXCALIBUR Marks and/or a mark confusingly similar to the EXCALIBUR Marks with the knowledge that the Trademark Owner owns and has used, and

continues to use, its trademarks in Las Vegas, Nevada, across the United States, and around the world, Defendants have intended to cause confusion, cause mistake, or deceive consumers.

29. Defendants are using a mark that is the same and/or confusingly similar to the EXCALIBUR Marks in connection with the sale, offering for sale, or advertising of services in a manner that is likely to cause confusion or mistake, or to deceive consumers as to an affiliation, connection, or association with the Trademark Owner, or as to the origin, sponsorship, or approval of Defendants' services or commercial activities by Plaintiff and the Trademark Owner.

30. Defendants are also using a mark that is the same and/or confusingly similar to the EXCALIBUR Marks in the <excaliburlasvegas.org> domain name to cause initial interest confusion and to divert Internet users away from the Trademark Owner's website.

31. Defendants' use of the EXCALIBUR Marks and/or a mark confusingly similar to the EXCALIBUR Marks has created a likelihood of confusion among consumers who may falsely believe that Defendants' business or the online gambling website, to which the <excaliburlasvegas.org> domain name is linked, is associated with the "Excalibur" resort hotel casino or that Plaintiff and the Trademark Owner sponsors or approves of Defendants' services or commercial activities.

32. As a direct and proximate result of Defendants' infringement, Plaintiff and the Trademark Owner have suffered, and will continue to suffer, monetary loss and irreparable injury to their business, reputation, and goodwill.

### **COUNT III**

(Unfair Competition)

Under The Lanham Act, 15 U.S.C. § 1125(a))

33. Plaintiff incorporates the allegations in the preceding paragraphs as if fully set forth herein.

34. Defendants' use in commerce of a mark that is the same and/or confusingly similar to the EXCALIBUR Marks in connection with Defendants' <excaliburlasvegas.org> domain name constitutes a false designation of origin and/or a false or misleading description or representation of fact, which is likely to cause confusion, cause mistake, or deceive as to affiliation, connection,

1 or association with the Trademark Owner, or as to the origin, sponsorship, or approval of  
2 Defendants' services or commercial activities by the Trademark Owner.

3 35. Defendants' use in commerce of the EXCALIBUR Marks and/or a mark  
4 confusingly similar thereto with the knowledge that the Trademark Owner owns and has used, and  
5 continues to use, its trademarks, constitutes intentional conduct by Defendants to make false  
6 designations of origin and false descriptions about Defendants' services and commercial activities.

7 36. As a direct and proximate result of such unfair competition, Plaintiff and the  
8 Trademark Owner have suffered, and will continue to suffer, monetary loss and irreparable injury  
9 to their business, reputation, and goodwill.

10 **COUNT IV**

(Trademark Dilution)

11 Under The Federal Trademark Dilution Act, 15 U.S.C. § 1125(c))

12 37. Plaintiff incorporates the allegations in the preceding paragraphs as if fully set forth  
13 herein.

14 38. The EXCALIBUR Marks are inherently distinctive. Through their adoption and  
15 consistent and extensive use, the EXCALIBUR Marks have acquired fame.

16 39. Defendants began using a mark that is the same and/or nearly identical to the  
17 EXCALIBUR Marks in connection with Defendants' <excaliburlasvegas.org> Internet domain  
18 name after the EXCALIBUR Marks became famous.

19 40. Defendants' use of the EXCALIBUR Marks and/or a mark confusingly similar  
20 thereto has and will cause dilution of the distinctive quality of the Trademark Owner's trademarks  
21 and will otherwise cause irreparable injury to its business, reputation, and goodwill.

22 41. Upon information and belief, Defendants' use of the EXCALIBUR Marks and/or a  
23 mark confusingly similar thereto was willful in nature, in that Defendants willfully intended to  
24 trade on the reputation of the Trademark Owner or to cause dilution of the EXCALIBUR Marks.

25 42. As a direct and proximate result of Defendants' dilution of the EXCALIBUR  
26 Marks, Plaintiff and the Trademark Owner have suffered, and will suffer, irreparable injury to  
27 their business, reputation, and goodwill.

**COUNT V**  
(State Trademark Infringement  
Under N.R.S. 600.420)

43. Plaintiff incorporates the allegations in the preceding paragraphs as if fully set forth herein.

44. Defendants have used and/or are using the <excaliburlasvegas.org> domain name, which contains the EXCALIBUR Marks, without Plaintiff's or the Trademark Owner's consent.

45. Defendants' use in commerce of EXCALIBUR Marks and/or a mark confusingly similar to the EXCALIBUR Marks in its <excaliburlasvegas.org> Internet domain name and redirecting the same to an online gambling website, constitutes a reproduction, copying, counterfeiting, and colorable imitation of the Trademark Owner's trademarks in a manner that is likely to cause confusion or mistake or that is likely to deceive consumers.

46. By using the EXCALIBUR Marks and/or a mark confusingly similar to the EXCALIBUR Marks with the knowledge that the Trademark Owner owns and has used, and continues to use, its trademarks in Las Vegas, Nevada, Defendants have intended to cause confusion, cause mistake, or deceive consumers.

47. Defendants are using a mark that is the same and/or confusingly similar to the EXCALIBUR Marks in connection with the sale, offering for sale, or advertising of services in a manner that is likely to cause confusion or mistake, or to deceive consumers as to an affiliation, connection, or association with the Trademark Owner, or as to the origin, sponsorship, or approval of Defendants' services or commercial activities by Plaintiff and the Trademark Owner.

48. Defendants are also using a mark that is the same and/or confusingly similar to the EXCALIBUR Marks in the <excaliburlasvegas.org> domain name to cause initial interest confusion and to divert Internet users away from the Trademark Owner's website.

49. Defendants' use of the EXCALIBUR Marks and/or a mark confusingly similar to the EXCALIBUR Marks has created a likelihood of confusion among consumers who may falsely believe that Defendants' business or the online gambling website to which Defendants linked the <excaliburlasvegas.org> domain name is associated with the "Excalibur" resort hotel casino or



1 that Plaintiff and the Trademark Owner sponsor or approve of Defendants' services or commercial  
2 activities.

3 50. As a direct and proximate result of Defendants' infringement, Plaintiff and the  
4 Trademark Owner have suffered, and will continue to suffer, monetary loss and irreparable injury  
5 to their business, reputation, and goodwill.

6 **COUNT VI**

7 (State Trademark Dilution  
Under N.R.S. § 600.435)

8 51. Plaintiff incorporates the allegations in the preceding paragraphs as if fully set forth  
9 herein.

10 52. The EXCALIBUR Marks are inherently distinctive. Through their adoption and  
11 consistent and extensive use, the EXCALIBUR Marks have acquired fame in the State of Nevada.

12 53. Defendants began using a mark that is the same and/or confusingly similar to the  
13 EXCALIBUR Marks in connection with Defendants' services, associated online gambling  
14 website, and Internet domain name after the EXCALIBUR Marks became famous in the State of  
15 Nevada.

16 54. Defendants' use of the EXCALIBUR Marks and/or marks confusingly similar  
17 thereto has and will cause dilution of the distinctive quality of the Trademark Owner's trademarks  
18 and will otherwise cause irreparable injury to the Trademark Owner's business, reputation, and  
19 goodwill.

20 55. Upon information and belief, Defendants' use of the EXCALIBUR Marks and/or  
21 marks confusingly similar thereto was willful in nature in that Defendants intended to cause  
22 dilution of the EXCALIBUR Marks or willfully intended to trade on the Trademark Owner's  
23 reputation.

24 56. As a direct and proximate result of Defendants' dilution of the EXCALIBUR  
25 Marks, Plaintiff and the Trademark Owner have suffered, and will suffer, irreparable injury to  
26 their business, reputation, and goodwill.

27

**COUNT VII**  
(Common Law Trademark Infringement)

57. Plaintiff incorporates the allegations in the preceding paragraphs as if fully set forth herein.

58. By virtue of having used and continuing to use the EXCALIBUR Marks, the Trademark Owner has acquired common law trademark rights in the EXCALIBUR Marks.

59. Defendants' use of a mark the same and/or confusingly similar to the EXCALIBUR Marks infringes the Trademark Owner's common law trademark rights in its EXCALIBUR Marks and is likely to cause confusion, mistake, or deception among consumers who will believe that Defendants' services, the associated online gambling website and/or Internet domain name originate from, or are affiliated with, or are endorsed by Plaintiff and the Trademark Owner, when, in fact, they are not.

60. As the direct and proximate result of Defendants' infringement of the Trademark Owner's common law trademark rights under Nevada and other common law, Plaintiff and the Trademark Owner have suffered, and will continue to suffer, monetary damages and irreparable injury to their business, reputation, and goodwill.

**COUNT VIII**  
(Deceptive Trade Practices  
Under N.R.S. § 598.0915)

61. Plaintiff incorporates the allegations in the preceding paragraphs as if fully set forth herein.

62. Upon information and belief, in the course of conducting business, Defendants knowingly made false representations as to an affiliation, connection, and/or association with the Trademark Owner by using a mark identical and/or confusingly similar to the EXCALIBUR Marks, and otherwise engaged in deceptive trade practices.

63. As the direct and proximate result of Defendants' deceptive conduct, Plaintiff and the Trademark Owner have suffered, and will continue to suffer, monetary damages and irreparable injury to their business, reputation, and goodwill.

**COUNT IX**  
(Intentional Interference With  
Prospective Economic Advantage)

64. Plaintiff incorporates the allegations in the preceding paragraphs as if fully set forth herein.

65. Upon information and belief, at the time Defendants adopted and began using a mark that is the same and/or confusingly similar to the EXCALIBUR Marks, and since that time, Defendants knew and have known that the Trademark Owner is in the business of providing resort hotel casino services, and that the Trademark Owner advertises those services on the Internet using the EXCALIBUR Marks.

66. Upon information and belief, Defendants committed acts intended or designed to disrupt the Trademark Owner's prospective economic advantage arising from providing those services.

67. Defendants' actions have disrupted or are intended to disrupt the Trademark Owner's business by, among other things, diverting web users away from the Trademark Owner's website and to the online gambling website Defendants linked to the <excaliburlasvegas.org> domain name.

68. Defendants have no legal right, privilege or justification for this conduct.

69. As a direct and proximate result of Defendants' intentional interference with the Trademark Owner's prospective economic advantage, Plaintiff and the Trademark Owner have suffered, and will continue to suffer, monetary damages and irreparable injury.

70. Based on the intentional, willful and malicious nature of Defendants' actions, Plaintiff and the Trademark Owner are entitled to recover monetary damages, exemplary or punitive damages and reasonable attorneys' fees and costs incurred in connection with this action.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully prays that the Court grant the following relief:

A. A preliminary and permanent injunction prohibiting Defendants, Defendants' agents, servants, employees and/or all persons acting in concert or participation with Defendants,

1 from: (1) using the EXCALIBUR Marks or confusingly similar variations thereof, alone or in  
2 combination with any other letters, words, letter strings, phrases or designs, in commerce or in  
3 connection with any business or for any purpose whatsoever (including, but not limited to, on  
4 websites, in domain names, in hidden text and metatags); and (2) registering or trafficking in any  
5 domain names containing the EXCALIBUR Marks or confusingly similar variations thereof, alone  
6 or in combination with any other letters, words, phrases or designs.

7 B. A preliminary and permanent injunction requiring the current domain name  
8 registrar to transfer the <excaliburlasvegas.org> domain name to Plaintiff;

9 C. An award of compensatory, consequential, statutory, exemplary, and/or punitive  
10 damages to Plaintiff in an amount to be determined at trial;

11 D. An award of interest, costs and attorneys' fees incurred by Plaintiff in prosecuting  
12 this action; and

13 E. All other relief to which Plaintiff is entitled.

14 DATED: November 6, 2008.

15 LEWIS AND ROCA LLP

16 By:   
17

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**MGM Mirage Operations, Inc. v. Gonzales, et al.**  
**EXHIBIT 1 TO COMPLAINT FOR INJUNCTIVE RELIEF AND DAMAGES**

**MGM Mirage Operations, Inc. v. Gonzales, et al.**  
**EXHIBIT 1 TO COMPLAINT FOR INJUNCTIVE RELIEF AND DAMAGES**

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**MGM Mirage Operations, Inc. v. Gonzales, et al.**  
**EXHIBIT 2 TO COMPLAINT FOR INJUNCTIVE RELIEF AND DAMAGES**





# Excalibur Las Vegas

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King Arthur’s mettle was tested by drawing the mighty Excalibur out of the stone in which it was encased, here at Excalibur Las Vegas you are treated as king of your own private castle. Unlike King Arthur’s tale, be rest assured your stay at Excalibur Las Vegas will be both refreshing and accommodating.

Excalibur Las Vegas hotel and casino is alive with entertainment that will satisfy the tastes and styles of the whole family. From casino and gaming for adults to underwater sea adventures with SpongeBob Squarepants for the kids.

Join SpongeBob on a submersible 4D adventure ride to the bottom of the sea where he pursues a runaway pickle in his desire to serve up the perfect Krabby Patty. Visit the Dragon’s Lair, the Vegas Store or the Kids of the Kingdom at the Castle Walk and explore the many distinctive shops it has to offer. For carnival and arcade game fun, set your sites on the Midway and enjoy entertainment for the whole family. If you want to rest and relax, spend time in the sun at the Castle pool, or enjoy a round of golf. The golf course has many courses from which to offer you a challenge.

Lose yourself to the magic of medieval time with the Tournament of Kings dinner show. This is one show where you can allow your children to eat with their fingers. Experience dancing maidens, jousting, fireworks and more. Laugh yourself silly with the comedy of Ronn Lucas or gain astounding insights with live readings with Sylvia Browne.

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Satisfy all your cravings with a fine selection of dining establishments at Excalibur Las Vegas; from the wacky and wild of Dick's Last Resort to Italian favorites at Regale Ristorante. You can also take a trip to the Sherwood Forest Cafe -open 24/7- or ease that craving for steak and seafood at the Steakhouse at Camelot. You're sure to leave your hunger at the door. Excalibur Las Vegas is missing nothing except you. So stop by, spend the night and leave your worries behind.

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